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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

The Center for Investigative Reporting and Patrick Michels,)	Case No. 4:18-CV-02711 DMR
)	
Plaintiffs,)	
)	ANSWER TO PLAINTIFFS'
)	COMPLAINT
v.)	
)	
U.S. Department of Homeland Security)	
)	
Defendant.)	

Federal defendant, United States Department of Homeland Security ("DHS"), hereby answers the Complaint for Injunctive Relief ("Complaint") that plaintiffs, The Center for Investigative Reporting and Patrick Michels, filed on February 15, 2018.

INTRODUCTION

1. This paragraph contains plaintiffs' characterization of this action to which no response is required. To the extent a response is required, defendant admits that plaintiffs purport that this action is brought under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and denies the remaining

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1 allegations.

2 2. Defendant admits that it received a FOIA request from plaintiffs dated November 10, 2017.
3 The remaining allegations of this paragraph contain plaintiffs' characterization of the request to which no
4 response is required. The document speaks for itself. To the extent a response is required, except as
5 expressly admitted, defendant denies the allegations.

6 3. This paragraph consists of plaintiffs' legal argument and conclusions of law, to which no
7 response is required. To the extent a response is required, defendant denies the allegations.

8 5. This paragraph contains plaintiffs' request for injunctive relief to which no response is required.
9 To the extent a response is required, defendant denies the allegations, and denies that plaintiffs are entitled
10 to such relief, or to any relief at all.

11 **JURISDICTION AND VENUE**

12 6. This paragraph consists legal conclusions as to jurisdiction to which no response is required.

13 7. This paragraph consists allegations as to venue to which no response is required. To the extent
14 a response is required, defendant lacks sufficient information to admit or deny the allegations and on that
15 basis denies the allegations.

16 8. This paragraph consists legal conclusions to which no response is required. To the extent a
17 response is required, defendant lacks sufficient information to admit or deny the allegations of this
18 paragraph, and on that basis denies the allegations.

19 **PARTIES**

20 9. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and
21 on that basis denies the allegations.

22 10. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and
23 on that basis denies the allegations.

24 11. Defendant admits the allegations of this paragraph.

25 **FACTUAL BACKGROUND**

26 12. This paragraph consists of plaintiffs' characterizations of ICE, Enforcement and Removal

Operations (“ERO”), to which no response is required. To the extent that a response is required, defendant admits the allegations and respectfully refers the Court to the referenced website for a complete and accurate description of ERO.

13. This paragraph consists of plaintiffs’ characterizations of DHS’ Chief Human Capital Officer Angela Bailey’s testimony to Congress to which no response is required. To the extent that a response is required, defendant admits that Ms. Bailey addressed Congress, and respectfully refers the Court to the Congressional Hearing cited in this paragraph for a complete and accurate description of its contents.

14. This paragraph consists of plaintiffs’ characterizations of Ms. Angela Bailey’s testimony to Congress to which no response is required. To the extent that a response is required, defendant admits that Ms. Bailey addressed Congress, and respectfully refers the Court to cited Congressional Hearing for a complete and accurate description of its contents.

15. This paragraph consist of plaintiffs’ characterization of bidding documents posted on a DHS website to which no response is required. To the extent that a response is required, defendant admits that bidding documents were posted on DHS websites, and respectfully refers the Court to the websites cited on this paragraph for a complete and accurate description of the contents.

16. This paragraph consists of plaintiffs’ characterizations of ERO 2.0 to which no response is required. To the extent that a response is required, defendant denies the allegations, and respectfully refers the Court to the websites cited in this paragraph for a complete and accurate description of the contents.

THE REQUEST

17. Defendant admits that it received a FOIA request from plaintiffs dated November 10, 2017. The remaining allegations of this paragraph contain plaintiffs’ characterization of the request to which no response is required. The document speaks for itself. To the extent a response is required, except as expressly admitted, defendant denies the allegations of this paragraph.

18. Defendant admits the allegations of this paragraph.

19. This paragraph consist of plaintiffs’ characterization of their FOIA request to which no response is required. The document speaks for itself. To the extent a response is required, defendant admits that plaintiffs requested a waiver of search and review fees, and denies the remaining allegations.

20. This paragraph consists of plaintiffs' characterization of the FOIA request to which no response is required. The document speaks for itself. To the extent a response is required, defendant admits that plaintiffs requested expedited processing of the FOIA request, and denies the remaining allegations.

21. Defendant lacks sufficient information to admit or deny the allegations of this paragraph, and on that basis denies the allegations.

22. Defendant admits the allegations of this paragraph.

23. Defendant admits the allegation of this paragraph.

24. Defendant admits the allegation of this paragraph.

25. Defendant admits that defendant has not issued a final response to the FOIA request, but denies the remaining allegations.

26. Defendant admits the allegations of this paragraph.

27. This paragraph consists of legal argument and conclusions of law to which no response is required. To the extent that a response is required, defendant denies the allegations.

28. This paragraph consists legal argument and conclusions of law to which no response is required. To the extent that a response is required, defendant admits that plaintiffs seek injunctive relief, but defendant lacks sufficient information to admit or deny the remaining allegations of this paragraph and on that basis denies the allegations.

CAUSE OF ACTION

29. Defendant incorporates its responses to paragraphs 1 through 28 above, and incorporates each response therein as though fully set forth herein.

30. This paragraph consists of conclusions of law to which no response is required. To the extent that a response is required, defendant denies the allegations.

31. This paragraph consists of legal argument and conclusions of law to which no response is required. To the extent that a response is required, defendant denies the allegations.

32. This paragraph consists of legal argument and conclusions of law to which no response is required. To the extent that a response is required, defendant denies the allegations.

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33. This paragraph consists of legal argument and conclusions of law to which no response is required. To the extent that a response is required, defendant denies the allegations.

34. This paragraph consists of legal argument and conclusions of law to which no response is required. To the extent that a response is required, defendant denies the allegations.

REQUESTED RELIEF

The remainder of the Complaint constitutes a prayer for relief to which no response is required. To the extent a response is required, defendant denies the allegations, and denies that plaintiffs are entitled to the relief sought, or to any relief at all.

All allegations not specifically responded to above are denied.

AND FURTHER the answering, defendant avers:

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction over some or all of the claims alleged.

SECOND AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over any matter to the extent plaintiffs failed to satisfy prerequisites to suit, as well as over any requests or allegations that are not contained in a FOIA request at issue in this action.

THIRD AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to exhaust administrative remedies.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs have not alleged sufficient factual and/or legal bases for their request for costs and/or attorney's fees.

SIXTH AFFIRMATIVE DEFENSE

At all times alleged in the Complaint, defendant was acting with good faith, with justification, and pursuant to authority.

SEVENTH AFFIRMATIVE DEFENSE

FOIA does not authorize the injunctive relief requested.

EIGHTH AFFIRMATIVE DEFENSE

Defendant cannot produce documents that FOIA exempts from disclosure. Disclosure of such information is not required or permitted. Some or all of the requested documents may be exempt from disclosure under FOIA.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs did not submit a FOIA request that reasonably describes the records sought as required by FOIA.

TENTH AFFIRMATIVE DEFENSE

There is no provision in FOIA for obtaining declaratory relief.

Defendant reserves the right to assert additional affirmative defenses in the event that such affirmative defenses would be appropriate.

WHEREFORE, defendant prays that:

1. The Complaint be dismissed with prejudice;
2. Plaintiffs take nothing by this action;
3. No injunctive relief be awarded to plaintiffs;
4. The Court enter judgment in favor of the defendant; and
5. The Court grant such other and further relief as it deems just and proper.

Respectfully submitted,

ALEX G. TSE
Acting United States Attorney

Dated: June 25, 2018

By: _____/s/
GIOCONDA R. MOLINARI
Assistant United States Attorney